

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Cellular Telecommunications Industry)	WT Docket No. 01-72
Association's Petition for Rulemaking)	DA 01-696
to Establish Fair Location Information)	
Practices)	
To: The Commission		

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular") hereby submits comments in response to the Petition for Rulemaking filed by the Cellular Telecommunications Industry Association ("CTIA") in the above-captioned docket.¹ Cingular supports commencing the rulemaking requested by CTIA. A small number of location-based services that offer significant benefits to consumers are now being offered with many more currently in the development stage. The public interest will best be served if during the development of these services and the design of the associated hardware, service providers, hardware manufacturers and their customers are given knowledge and a full understanding of applicable privacy rules.

Location-based services are unique to wireless applications. The rules that govern them should be similarly unique, in their application if not in their form. They may therefore differ from privacy guidelines affecting all telecommunications providers. Clear rules governing these services are necessary to avoid the inevitable costs that would be incurred by the wireless industry and by

¹ *Wireless Telecommunications Bureau Seeks Comment on Request to Commence Rulemaking to Establish Fair Location Information Practices*, WT Docket No. 01-72, Public Notice, DA 01-696 (Mar. 1, 2001).

consumers if rules were not promulgated until after systems were already implemented. Thus, Cingular strongly recommends that the Commission institute a rulemaking, separate from the CPNI proceeding, proposing clearly defined guidelines specifying the obligations of the wireless industry and the rights and obligations of consumers. As part of this rulemaking, the Commission should propose a safe-harbor for service providers that comply with any guidelines ultimately adopted as a result of the rulemaking.

DISCUSSION

CTIA suggests that privacy guidelines or rules issued by the Commission be based upon four factors that comprise generally accepted information practices: (1) notice, (2) consent, (3) security/integrity, and (4) technology neutrality. Cingular agrees with this approach and provides specific comments below with respect to each factor.

1. Notice.

Cingular agrees that notice should be a fundamental obligation imposed on carriers offering location-based services. CTIA has proposed principles that it claims “would ensure that users of any mobile service will be informed of the service provider’s location information collection and use practices *before* any information is disclosed or used [and that customers] . . . will then be free to choose whether to participate or not in a location-based transaction or activity that will result in the collection or use of location information.”² Likewise, CTIA requests “that the Commission promulgate rules to ensure that mobile customers . . . are well informed of location information collection and use practices *prior* to collection . . .” Collection does not include the acquisition of

² Petition at pages 2-3.

location information used to complete a call or provide a subscriber access to a network, such as a user's rough location or cell cites.³

CTIA correctly points out that consumers can receive notice concerning location information practices in various ways, including by email, at web site postings, by inclusion in service agreements, in billing inserts, by letter and/or by receiving notification of a toll-free number or a website posting.⁴ Cingular believes that for notice to be meaningful and effective, it will need to be given in varying ways depending on the service, device, and/or medium being used. For example, a brief text message, mailing, billing insert, or other notice directing the user to a website posting may be used effectively.. Accordingly, it would be unwise to specify certain methods of giving notice. .

2. Consent.

Cingular agrees and supports CTIA's recommendation that the rulemaking should require the express authorization for the use of location information.⁵ Safeguards should be in place to assure customers that location information will not be *used or disclosed* without the customer's knowledge and express authorization.⁶ Cingular suggests a clarification to CTIA's proposal to require that

³ Petition at n.22.

⁴ Petition at page 9.

⁵ CTIA implies that authorization should be obtained "prior to any collection activity other than those specific exceptions under Sections 222(d) & (f)." Petition at 9. Sections 222(d) & (f) of the Act set forth specific *uses* for which a carrier need not obtain approval of the customer. These sections do not provide exceptions to a prohibition against collection. Such a prohibition is not imposed by the Act.

⁶ At page 9 of the Petition, CTIA suggests, as Cingular does herein, that location service providers be required to inform their customers "about the specific location information collection and use practices *before* any disclosure or use of location information takes place," which may indicate that CTIA does not seek a rule requiring disclosure before collection. In any event, Cingular wishes to avoid any ambiguity.

customers must provide their consent *before* information is disclosed or used, rather than before the information is collected.

Such authorization can be received in various ways. Cingular supports CTIA's proposal that this authorization can be given in the following ways:

- Signed service agreements;
- Electronically-accepted website agreements;
- Electronic signaling sent by a customer from a handset or PDA; or
- Other written, oral, electronic or other methods that evidence the customer's authorization.

Cingular again points out that, given the many different services, devices, and media being used, it would be ineffective for any rules/guidelines to mandate certain methods by which customers could give consent. Instead, rules/guidelines could be issued that specify that consent must be verifiable and based upon adequate notice as defined in the rules/guidelines. The Commission should recognize the implicit authorization of consumers where, for example, customers request services that require the use of location information.⁷

3. Security And Integrity.

Location information should, as CTIA has suggested, be maintained securely. Cingular would like the Commission to recognize that carriers and service providers will need assurances, via a safe-harbor provision for compliance with the rules/guidelines, that carriers will not be held liable or penalized for breaches of their security systems if they have exercised reasonable care. Cingular believes it is essential, for example, that no carrier or service provider be penalized under the

⁷ Petition at n.24.

rules/guidelines, or under the Communications Act (the “Act”), for any unauthorized access to or interception by a third party of location information.

4. Technology Neutrality.

Cingular supports the suggestion of CTIA that the guidelines/rules that result from the rulemaking be consistently applied regardless of whether the location-based services being offered are based upon handset or network-based technology, so that mobile consumer’s privacy expectations are satisfied regardless of the nature of the location technology used.

5. Safe Harbor for Action Taken to Assist Emergency Services.

Cingular wishes to direct the Commission to the need to provide carriers with safe-harbor protection against liability for any action taken in good faith to comply with the provisions of Section 222 (d)(4) of the Act authorizing the sharing of location information with (A) emergency services, (B) legal guardians, and (C) information or database management services for purposes of assisting in delivery of emergency services.⁸

6. Consistency of Federal Regulations.

Finally, Cingular wishes to emphasize to the Commission that a nationally-uniform federal regulatory scheme, incorporating the concepts described above, will create a level of consistency that would not exist under potentially-varying state laws and thus benefit carriers and customers alike.

⁸ No customer consent is required in such instances. Sections 222(d)(4) and 222(f) of the Act.

CONCLUSION

For the foregoing reasons, Cingular supports the CTIA's Petition to commence a rulemaking to establish fair location information practices. The rulemaking should be conducted as soon as possible so that guidelines and rules are known and can be incorporated into the systems and services as they are being built rather than after being implemented.

Respectfully submitted,

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